

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
FULL COMMISSION
MEETING MINUTES**

July 24, 2013

1. CALL TO ORDER

Vice Chairman Scott Hauge welcomed everyone and called the meeting to order at 10:01 a.m. at the Department of Consumer Affairs, First Floor Hearing Room, 1625 North Market Blvd., Sacramento, California 95834.

ROLL CALL

Commissioners Present: Rocky Burks, Chairman
Scott Hauge, Vice Chairman
Guy Leemhuis
Anthony Seferian
Betty Wilson

Commissioners Absent: Tom Ammiano
Connie Conway
Ellen Corbett
Jean Fuller
Lillibeth Navarro
Chester "Chet" Widom

Staff Present: Stephan Castellanos, Executive Director
Angela Jemmott, Program Analyst
Steven Funderburk, Office Technician

Also Present: Sean Connelly, Office of Senator Corbett
(Teleconference)
Julia Bilaver, Attorney General's Office
Lisa Cooley (Teleconference)
Wade Cooper, Teranomic Software
Armando Herman
Dhiru Patel (Teleconference)
Ted Prim, Attorney General's Office
Adam Sutkus, Associate Director, Center for
Collaborative Policy

Staff Member Jemmott called the roll and confirmed the presence of a quorum.

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PLEDGE OF ALLEGIANCE

Vice Chairman Hauge led the Commission in the Pledge of Allegiance.

HOUSEKEEPING ITEMS

Vice Chairman Hauge reviewed the meeting protocols.

2. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

Armando Herman stated his concern over inaccessible sidewalks in Los Angeles, particularly in District 14. He submitted a copy of a motion from the Los Angeles City Hall and an article from the Los Angeles Times, dated January 31, 2012, regarding the problem with sidewalks. He felt his complaints were ignored by the City of Los Angeles, and came to ask the Commission for help to ensure accessible, safe public sidewalks in Los Angeles.

Commissioner Wilson asked if he brought this issue to the attention of the Los Angeles Commission on Disability. Mr. Herman stated he has tried to attend their meetings, but they have always been postponed or rescheduled, or do not have any members of the Commission present.

Lisa Cooley, a former member of the California State Council on Developmental Disabilities, speaking as a member of the public, stated her concern regarding statewide hotel accessibility related to the use of automatic switches in hotel restrooms. Chair Burks asked Ms. Cooley to contact the CCDA office to give further details of her concern to staff. It may fall under the Division of the State Architect (DSA) if it is an issue on building code compliance.

Dhiru Patel, a small business owner in Lancaster, California, stated there were six hotels that were sued by a hearing person with a service dog and the requirement for teletypewriter (TTY) equipment. His business went through a CASp inspection and tried to correct all of the required items, yet he has been sued multiple times. He mentioned a man named Alexander Johnson, who has sued 250 businesses with the help of a lawyer in Hollywood, California. Small businesses are being sued and spending money on compliance, and are therefore unable to pay for the suit. He stated people come to his hotel with service dogs, yet he does not know if the dogs are helping the customers or not, because they seem unnecessary while the customers secure their rooms. He asked for the Commission's help in addressing this issue and added that small business owners want to help the disability community.

Chair Burks asked Mr. Patel to contact the CCDA office and speak to Executive Director Castellanos to address his ongoing concerns.

3. GENERAL BUSINESS ITEMS

a. Review/Approval of Meeting Minutes — (April 4, 2013) — Action

MOTION: Vice Chairman Hauge moved to approve the April 4, 2013, California Commission on Disability Access Full Commission Meeting

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Minutes as presented. Commissioner Wilson seconded. Motion carried unanimously, with one abstention.

b. CCDA Introduction of New Commissioner and Swearing in of Office by Senator Roderick Wright

Vice Chair Hauge introduced Senator Roderick Wright. Senator Wright led the swearing in of office for new Commissioner Guy Leemhuis.

Chair Burks, Vice Chair Hauge, and Executive Director Castellanos welcomed Commissioner Leemhuis to the Commission. Commissioner Leemhuis stated he is honored to serve on this Commission and looks forward to working collaboratively with the other Commissioners to effect change in disability access. He hoped that the Commission will continue to work creatively to realize true access in the state of California for all citizens.

c. Status of Commissioner Appointments – Update

Executive Director Castellanos stated the Commission has been contacted by the governor's office regarding another possible appointment. He stated he will keep everyone up to date with new information as he receives it. Chair Burks asked people to encourage desirable candidates to submit their applications to the governor's appointments office.

d. Disabled Access Legislative and Regulatory Developments

1. AB 223 – R. Olsen – Civil Actions: Disabled Access

2. SB 550 – D. Jackson – Accessible Housing

Executive Director Castellanos stated these two bills are being held in committee and under submission and will not be going forward.

Commissioner Wilson suggested developing a Committee to help staff track relevant bills to make recommendations on the Commission's responsibilities and approach, to be designed as part of the CCDA Strategic Plan. The Commission cannot effectively make decisions and recommendations without understanding the impact of the bills and receiving timely updates. She stated the need for the Commission to take a more proactive role and not let these bills or issues go by the wayside because they affect too many people.

Executive Director Castellanos agreed with Commissioner Wilson's recommendations and stated he will look forward to working with the Committee on how to implement that. He stated the Commission uses a tracking service to identify bills of interest, and also watches what bills other organizations, such as Disability Rights California and the California Chamber of Commerce (CalChamber), are tracking.

Vice Chair Hauge asked if the authors of the legislation have reached out to the Commission. Executive Director Castellanos stated they have not, so far, but staff is looking at how to improve that. He is in the process of setting up regular

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meetings with the legislative members of the Commission to provide them with Commission updates and to receive their input.

Public Comment:

Mr. Herman stated it is important to continue to consider how future legislation will impact individuals with disabilities for generations, and to come against legislation that will hinder or interfere with them. History shows that, without transparency, prohibited actions take place that result in the creation of more legislation and more amendments. He asked the Commission to keep transparency, visibility, accountability, and oversight in mind.

Action Items

- No action items

e. CCDA Quarterly Budgets Report

Executive Director Castellanos stated there are two or three postings that are not reflected in the fourth quarter budget reporting that include ongoing expenses and the retention of two consultants.

Staff Member Jemmott reported that the office operating expense of \$93,113 and the personnel expense of about \$19,000 are not reflected in the budget report. These figures have exhausted the current year budget. The August monthly budget report will reflect the year end expenditures.

Chair Burks asked how coordination and collaboration are progressing with the other state agency and departments the Commission relies on for assistance with the budget.

Executive Director Castellanos stated staff is in touch with the other agencies the Commission contracts with for support. He added that collaboration is as much staff's responsibility as theirs. Oftentimes, rotating individuals are assigned to assist the Commission, so it is important to remain close to the offices, identify those individuals, and get to know them. Staff Member Funderburk has assumed much of the responsibilities and has been very helpful in that effort. Executive Director Castellanos stated the other agencies are improving, and staff is improving as well.

Action Items

- No action items

f. Executive Director Report

Communications and Outreach:

Public Assistance: Executive Director Castellanos stated a number of the provisions of Senate Bill (SB) 1186 took effect on July 1st, including the item that deals with a landlord's responsibility to disclose whether or not their property has

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been inspected by a CASp inspector. Staff has received a number of calls relating to this issue, and is collecting this information to add to the FAQ section of the CCDA website. There is a question about how staff will deal with customer call support in the future as calls continue to increase.

DSA/DOR/CCDA Collaboration: Executive Director Castellanos stated the relationship with the DSA and the Department of Rehabilitation (DOR) continues to improve as staff works with them to develop educational tools. The CCDA has been included in the DOR's 2013-2018 Strategic Plan under Goal Two, Equal Access, and the DOR continues to express commitment to the Commission and its success. The DOR's video, relating to helping businesses understand their duties and responsibilities, will be released in September and will be posted on the CCDA website, along with a webinar the DOR recently hosted on the myth of drive-by lawsuits and educational materials provided by the ADA network.

DGS: Executive Director Castellanos stated the Department of General Services (DGS) is working with staff, as well as the DOR, which had to approve these efforts, to establish Internet service for the Commission, to be used primarily as a communication tool.

ICC: Executive Director Castellanos stated he recently met with David Walls, of the International Code Council (ICC), formerly the executive director of the California Building Standards Commission (CBSC), to discuss training on understanding the code, utilizing ICC's robust training efforts, and strengthening the understanding and use of the code of designers, architects, and building enforcement professionals to achieve compliance.

Other Entities: Executive Director Castellanos stated he has reached out to rental property owners, building owners, managers' associations, hotel and restaurant associations, and the CalChamber to work with the Commission in terms of education, and that effort will continue. He will be meeting with a staff member of the CalChamber, who has been working on this issue for quite some time to discuss working together.

Legislation:

SB 1186: Executive Director Castellanos stated the collection of data and the tabulation on lawsuit claims and demand letters in California is ongoing and the report will be posted on the new CCDA website to be rolled out on July 31st. The data input will continue after the initial posting.

Website:

Teranomic: Executive Director Castellanos stated staff has obtained Teranomic to update and organize the CCDA website. Although it will not be as robust as he would like, when it first rolls out, there will be a significant change in the website. It will be focused on the user and not on the Commission as a state agency.

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Commissioner Questions and Discussion:

Commissioner Leemhuis stated he is aware that the Commission is understaffed and overworked, and that it is a working Commission where the Commissioners participate in the activities. He suggested that Commissioners help Executive Director Castellanos make connections.

The disability community is often pigeon-holed into categories, but people with disabilities make up one community. Along with the DOR, Commissioner Leemhuis suggested collaborating with other state agencies, such as the Department of Developmental Services, the State Council on Developmental Disabilities, and the Department Of Mental Health, because the issues of access pertain to all aspects of disability. He cautioned against sending the message that the Commission is focused on only one aspect in the disability community.

One of the things the Commission is to do is to create a dialogue to identify what needs to be done. The top ten violations will go towards helping the Legislature understand what needs to be done, but the bigger dialogue has to go beyond that, to how to engage the small business community to make some of the changes, to work with them collaboratively to educate them, and to identify some difficult issues. This will not be easy work, but that dialogue and education need to happen.

Commissioner Leemhuis stated the need to leverage some of these entities to let the Commission take the lead with their help and resources. The conversation that needs to be had comes down to people understanding what it means for something to be a barrier, what the pros and cons are to having a service animal identification card, and other real-world issues that people do not discuss. He stated his hope that this Commission will not become the vehicle for complaints about lawsuits. If the CCDA is to provide leadership, then it should be helping the dialogue in the state of California. To that end, he stated he is excited about the strategic planning process, and would like to be involved in those activities.

Commissioner Wilson stated education is one of the priorities in the CCDA Mission Statement and in strategic planning, but the Commission has not yet focused on garnering the support of the business community. She stated she has brought up many times before that the Commission is sitting in the middle of so many corporations and agencies that can be allies; but to date, the Commission has not tapped that resource. She stressed the importance of educating not only the public but the Legislature, as they are part of the gap in communication, learning, and understanding. As Commissioner Leemhuis stated, the word "barrier" means many things. The CCDA is not only the Commission of disability access, but program access and architectural access. This is where the connection must be made by the Education/Outreach Committee. She stated her desire to be a part of the strategic planning process and community outreach and development, and to assist Commissioner Seferian with the interns.

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Vice Chair Hauge stated he is founder and chair of Small Business California. He asked that the Commission extend their outreach to this organization. He has an email tree that goes out 5,000 small businesses, and he invited the Commission to direct information to Small Business California, so that he can ask these businesses how to best work together.

Action Items

- No action items

4. STRATEGIC PLANNING PROJECT

Chair Burks stated his hope that the CCDA Strategic Plan will address many of the issues identified by Commissioners today. It will take collaboration and cooperation to address the issues of barriers, including the attitudinal barriers towards people with disabilities that permeate society. He asked how this Commission can address attitudinal barriers through education and training processes. It will be interesting to note, as the Commission begins to understand the litigation issues, if they really are drive-by lawsuits or if there is merit in the violations that has created the lawsuits.

Commissioner Wilson stated it can be both. Chair Burks agreed. He urged Commissioners to bear in mind what is driving the issue of barriers – the critical barrier of integration is attitude. He stated his hope that the CCDA Strategic Plan will help move the Commission in a direction to help alleviate that.

Executive Director Castellanos stated the California State University Sacramento Center for Collaborative Policy has a history of dealing with issues that are important to this Commission. Most recently, the Center worked with the DSA to bring the regulatory framework in California into line with federal regulation. Staff selected the Center because of their familiarity with government organization and what it takes to create a better-functioning, stronger, more robust government agency.

The Commission must address a difficult area of law and regulation that encompasses attitudinal as well as cultural issues. It is important to take a focused approach to determine how to address these issues, while providing education and information, to make the most rapid progress. Although lawsuits are rampant in California, the Commission should not focus on the issue of the lawsuit itself. The CCDA's goal is to bring communities together – to use the website and other resources in the best manner possible to create a dialogue among individuals and organizations. Businesses benefit from the inclusion of more consumers in their business enterprises, especially in this economic environment.

Executive Director Castellanos stated the Center will assist the Commission in creating that focus and identifying methods for staff and Commissioners to better work together and with stakeholders moving forward. He introduced Adam Sutkus, the associate director of the Center, who gave a presentation about how the plan will be organized.

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Presentation

Mr. Sutkus stated he and his partner, Jodie Monaghan, the associate mediator of the Center, are pleased and honored for the opportunity to help the CCDA in the strategic planning process, and look forward to working with Commissioners and the stakeholder community on this project. The Center is part of the academic side of Sacramento State University's Social Science Interdisciplinary Studies School. It is a standalone center, a nonprofit consulting firm, with the mission to help organizations build capacity, work better, and better engage with their stakeholder communities; to enhance public policy capacity; and to develop systems to help governments improve.

The Center comes into organizations with conflict between agencies on a complex public policy issue, and then formulates a design to work with the issues, stakeholders, and players; facilitates the meetings; manages the process; develops a plan to progress with regard to a collective viewpoint; and works through traditional, academic-based, basic concepts of public policy mediation, facilitation, and interspace negotiation. The Center utilizes a systematic process to work with organizations and move through a methodical process over time – it can be years or days, depending on the issues to work through – of identifying issues and developing a process to reach a resolution based on interests that is acceptable to all parties.

Mr. Sutkus stated this is one end of the spectrum – the full-blown dispute resolution between public policy agencies. However, over the last several years, the Center has been spending more time on the front end of organizational design and collaborative governance, where they work with an organization not unlike this Commission. The Center is doing organization diagnosis, strategic planning, and other elements on the front end, as opposed to the back end. They are looking internally, to help organizations redesign their systems and work with key stakeholder groups in a way that can be most effective up front. This can take the shape of a strategic plan or a workshop, where organizations reach out to a diverse set of stakeholders around the state to gather feedback in an organized and structured format that leads towards a public policy conclusion. Minimum resources and maximum efficiency are needed, which is how the Center comes into play.

The Commission's report to the Legislature, in compliance with Senate Bill (SB) 1186, which also includes enabling legislation of SB 1608, is a rich starting point. The Center will focus on the refinement of the CCDA mission and the development of goals and objectives to support action planning. It is important that Commissioners understand that the Center's role is to help develop a strategic plan; after its development, it will be up to the Commission to implement it.

The Center will put together a design team, typically made up of five to six people: Executive Director Castellanos, a representative Commissioner, a couple of key

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stakeholders, and others that the Commission appoints. The Center will develop the strategic plan with the design team.

Step 1 – One of the first things the Center would like to do is a stakeholder assessment, which consists of contacting twenty stakeholders, staff, and partners, and asking them what accomplishments for the issues, challenges, gaps they desire for the CCDA and disability access throughout the state. This process provides a snapshot of where the Commission is now and helps define the starting point.

The Center will incorporate the research contained in the report to the Legislature into a Summary Findings Report. The Center will likely conduct a web survey, where people can provide input. The Summary Findings Report will be reviewed with the full Commission to ensure the Center is on target.

Step 2 – Next, the Center will design and hold a strategic planning session. A two-day session is recommended so that there will be adequate time for Commissioners to look at mission vision, goals, and objectives, and finally create an implementable action plan. The Center will create a working draft as the byproduct of Step 2.

Step 3 – Mr. Sutkus suggested holding a validation workshop in both the north and south. A workshop would reach stakeholders and associations and give them an opportunity to weigh in.

Step 4 – The Center will create a second draft that defines the action plan. A key part of this step is to create a governance structure, in order to implement the strategic plan once it is completed.

Step 5 – The Center will produce a final draft of the strategic plan, bring it before the Commission for approval, create some sort of public access, and then post it to the website.

Mr. Sutkus stated the Center is looking to do the startup and assessment in July through September, create the Summary Findings Report in October, plan for and hold the strategic planning session, and create the initial draft by the end of the year. The Commission has a deadline at the end of January to provide an update report to the Legislature. He recommended showing that progress is being made and having, at the least, a draft plan. Then, in January through March, that would give the opportunity to hold the validation workshops, refine the strategic plan, and present it to the Commission for approval.

Creating and implementing a strategic plan and including a progress report in the January report to the Legislature will elevate the visibility of the CCDA within the entire state. This would offer an opportunity to create real buy-in from stakeholder groups. The Center will prepare a robust, thoughtful strategic plan, incorporating how the CCDA wants to move forward, engage their various constituencies, and change the face of disability access in the state. Mr. Sutkus emphasized the importance of creating a governance structure, so there is ongoing implementation.

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Commissioner Questions and Discussion:

Commissioner Wilson asked to hear more about how Mr. Sutkus plans to engage Commissioners in working with him.

Mr. Sutkus stated there are several ways that Commissioners can be involved:

- The structure of the design team is still being discussed, but there may be an opportunity to have a Commissioner representative on the design team to work with the Center day to day.
- The Center will work with staff to ensure that Commissioners are engaged throughout the process at the right moments through e-mail updates, quarterly meetings, or other methodologies.
- The strategic planning session and the validation workshop will be opportunities for Commissioners to be involved.

Mr. Sutkus stated there may be other ways to be involved, and asked Commissioners to submit suggestions.

Commissioner Leemhuis stated he has been involved in planning processes and strategic plans in the past and is interested in being a part of the design team. The validation workshops in the north and south will require creativity. Choosing where and how to hold the validation workshops is different when working with both the disability community and the small business community at the same time.

Mr. Sutkus agreed, and added that creativity is necessary even before that. This will build a good process that is exciting, useful, and meaningful with long-term benefits.

In answer to Vice Chair Hauge's question, Mr. Sutkus stated the biggest challenge over time in this process is to involve the right people in the design process. He referenced a discussion earlier today about frustration in the small business community, and stated the small business community needs to be one of the entities involved. One of the key areas the design team will discuss is who needs to be at the table. Who is at the table at the front end, when the Commission reaches out with interviews and assessments, will ensure that the CCDA Strategic Plan will reflect the suggestions, potential goals, weaknesses, gaps, and ideas for the future from a comprehensive group of stakeholders, and that all issues are addressed to help the Commission have a strong strategic plan that will have a successful implementation. Having everyone at the table ensures that it addresses the right issues with the support of stakeholders. Over time, the design process has been one of the most important elements to consider on the front end. If the design process up front is done adequately, openly, transparently, and inclusively, then there will be a dynamic, supported plan at the back end.

Chair Burks stated the desire for a much broader scope of the Commission has the potential of being problematic in terms of the statutory obligations. He asked Mr.

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Sutkus to help guide the Commission in that respect. The design team will be critical to the ultimate outcome of this process.

Executive Director Castellanos stated the Commission still has a number of duties and responsibilities – some statutory, and some ongoing – that will continue. Staff will not stop current activities to take up this effort.

Public Comment:

Mr. Patel volunteered to help Mr. Sutkus and the Commission with the strategic plan. He has been involved in strategic planning for AT&T. Chair Burks asked Mr. Patel to contact Executive Director Castellanos.

Action Items

- No action items

5. RECONSTRUCTION OF COMMITTEES – ESTABLISH CHARGE

a. Executive Committee

Chair Burks gave Commissioners a moment to review the policy guidelines on the construction of the selection of public committee member protocols. He stated the Executive Committee is comprised of the executive elected members, which are the chair and vice chair. The standing committee and ad hoc subcommittee members are appointed by the chair.

At this time, the Executive Committee is still under the old construction of the Commission: the chair, the vice chair, the representative from Senator Corbett's office, and the chair of the recognized Committees. Ultimately, there was only one Committee that still had a chair, so the Executive Committee is currently comprised of Committee Member Connelly, Chair Burks, Vice Chair Hauge, and Commissioner Navarro.

Chair Burks explained that the old Committee structure was under the SB 1608 requirements. Executive Director Castellanos added that the SB 1608 items, in terms of committees, have not technically been removed, and staff is considering how to best implement them under the Committee restructure. The suggestion for the Committee restructure is to move from a number of inadequately-staffed standing Committees to one where short-term projects may be completed by establishing task groups or subcommittees.

Chair Burks disbanded the prior Committee structure. The new Committee structure will consist of two standing Committees: the Executive Committee, and the Education/Outreach Committee. Executive Director Castellanos added that the Education/Outreach Committee is so named because SB 1608, the bill that formed the Commission, and SB 1186, the bill that modified the Commission charge to focus on the development of educational materials, information, and outreach, both had education and outreach as part of the Commission mandate.

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The appointments for the new Education/Outreach Committee, as determined in the last meeting, are Vice Chair Hauge and Commissioners Navarro and Wilson. With Commissioner Leemhuis's desire to be a part of outreach and education, it is appropriate to add him to the Education/Outreach Committee as well.

Vice Chair Hauge asked Commissioner Leemhuis if he would like to be on the Committee. Commissioner Leemhuis stated it sounds like an important Committee.

Commissioner Leemhuis agreed that standing chairs would be part of the Executive Committee, but, until the Commission fills the vacant seats, and to afford maximum input, he suggested the Executive Committee function as a whole until such time that additional Commissioners are appointed.

Chair Burks stated it is the recommendation to suspend the CCDA Bylaws, Item 5, Executive Committee, in terms of the Executive Committee's construct, to operate as a Committee of the whole, comprised of Chair Burks, Vice Chair Hauge, and Commissioners Leemhuis, Navarro, and Wilson.

MOTION: Commissioner Leemhuis moved to suspend the California Commission on Disability Access Bylaws, Item 5, Executive Committee's construct, to operate as a Committee of the whole. Existing voting members of the Commission will comprise the Executive Committee until such time that additional Commissioners are appointed. Vice Chairman Hauge seconded. Motion carried unanimously.

b. Education/Outreach Committee

Chair Burks stated the Education/Outreach Committee will have a primary function of education and outreach and is comprised of the same members as the Executive Committee, who will be working together to identify the Committee direction. It will continue current activities and establish subcommittees inside the Education/Outreach Committee, such as one to address legal issues, and another to gather feedback on the type of education and outreach provided by last week's webinar on drive-by lawsuits.

Commissioner Leemhuis emphasized the need to have a conversation about the development of the top ten violations that are a deliverable under the new statute. He stated the top ten statewide list is not all that helpful, and suggested a top-ten countywide list instead. Large counties do not have the same issues for access as small counties. Creating a top-ten countywide list would honor the spirit and direction of the law, which is education, and be county-competent at the same time. This would be connected to the outreach and education piece in strategic planning, because it would then send a message to the business and disability communities that this Commission is concerned with all of the state, instead of solely large areas based on the number of complaints filed.

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It may engender both business and disability communities to provide the necessary information. The Commission has contacts and resources countywide already. He suggested using the development of cultural competence plans in all of the counties for the Department of Mental Health as a model. Although it was a statewide law, it had to be implemented countywide.

Commissioner Wilson agreed and suggested developing valid, reliable surveys and assessments as a way to gather information from the various counties. She suggested contacting a research analyst to coordinate the effort to ensure all areas are reached in this statewide effort. This should be done quickly.

Executive Director Castellanos stated staff is collecting more data than is required by law from the filings the Commission receives, to allow the greatest flexibility in the use of the data. He agreed with Commissioner Leemhuis that there is a tremendous amount of diversity in California counties, and, in anticipation of questions about specific locations, staff is collecting data by zip code. The zip code was not required, but staff felt it was the easiest way to connect the data to locations within each county.

Commissioner Wilson asked what would allow a broader range of different areas, since the majority of the complaints are coming from Southern California, and if there are associations of northern and southern counties.

Executive Director Castellanos stated there are associations and organizations that support counties and, in terms of assessments and data collection, the Commission will be engaging in some of that activity in the strategic planning effort. The design team will be an important part of that. He recommended refining a research agenda on a continuing basis to determine the educational needs, identify where the gaps are, and educate the public on the biggest problems, such as lack of understanding.

Executive Director Castellanos agreed with Chair Burks and Commissioner Leemhuis about the cultural issues. Tens of thousands of lawsuits filed after the passage of the ADA have created a strained environment between the business and disability communities. This Commission has an opportunity, through the CCDA website, outreach, and educational materials, to bring those communities together to have a dialogue about the issues they have in common in order to reach solutions in the easiest and most direct way. It will involve study to reach this goal. He agreed with Commissioner Wilson that conducting assessments and doing research is a good way to identify what is most effective.

Commissioner Wilson suggested soliciting the assistant of the Senatorial Districts or Assembly Districts to reach a broader statewide audience. The offices can broadcast out to their constituents, and the constituents can respond with their information to the CCDA website.

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Executive Director Castellanos thanked Vice Chair Hauge for putting staff in touch with the mayor's office in San Francisco and Small Business California to distribute information to their membership. The Commission is a small group, but has the power to leverage their knowledge and information through other organizations. He agreed with Commissioner Leemhuis that it is important for staff to work with Commissioners to understand their networks and outreach connections to spread information to the broadest audience possible.

Commissioner Wilson suggested incorporating the Commission's elected officials and the networks and outreach connections of the Senate and Assembly offices in this effort.

Commissioner Leemhuis stated court filings, although they assist the Commission in identifying businesses that have been targeted, do not necessarily denote what is endemic statewide. That does not mean this is not a useful process; it is useful to see what is going on and if there is a way that state and local governments can assist the small businesses that are targeted.

He restated his concern for qualification in the top-ten report; it cannot report that something is statewide that is mainly coming from Southern California. The Commission needs to specify that the findings in the report are based on the data received; otherwise, it is a misrepresentation of fact.

Commissioner Leemhuis stated he wanted to see what is happening in different counties. Lawyers can be strategic at times as to where they file. Where the lawsuits are filed tells where the lawyer is more than where the problem is, because many lawyers will not file where they will not be paid. Although there is a correlation between poverty and disability, some of the areas that may be the biggest offenders and be in the most need of education and resources from the state and local governments assisting them are not targeted for lawsuits. He felt the numbers will lead the Commission to help small businesses that need help, but, ultimately, to find out those are not the areas of most need and noncompliance.

He stated the goal is laudable, but was concerned that only 944 claims have been submitted to the Commission; this is a miniscule percentage to draw any kind of conclusion. The Commission needs to stand together and address problems now.

Executive Director Castellanos stated the first posting of the report is July 31st. The website redesign will correspond with the first posting of the data. He stated Commissioner Leemhuis has some important points. Staff is collecting more data than required, primarily for the reasons Commissioner Leemhuis outlined. It is up to the Commission to develop a policy for how to use the information for the greatest benefit possible.

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Executive Director Castellanos appreciated what Commissioner Leemhuis said about the need for a disclaimer. He welcomed Commissioner Leemhuis's input on how to best represent the data.

Commissioner Wilson stated the strategic planner from the university has done widespread research for data collecting. Making recommendations is one of the charges of this Commission, and Commissioners need to discuss what to do with this data once it is collected. Gathering feedback needs to be resumed, and it needs to be done quickly.

Commissioner Leemhuis stated social media is an important form of communication and, although some people may not have access to computers, there are many people with disabilities that use technology because it creates an additional level of freedom and voice. A number of politicians, including the President, have used social media effectively. By the time an assessment tool rolls out, it is time to create a new one, whereas social media is up to the minute and less expensive.

Chair Burks stated one of the things the Commission needs to be focused on is staying on the initial priorities within the Title III public accommodation area. Programs, services, and activities are more aligned to a Title II entity. This Commission's primary function is to address the litigation as it pertains to a very narrow scope, within the Title III role. The reality is, in terms of litigation, it is an enforcement problem no one wants to take responsibility for. The enforcement authorities are the municipalities, counties, and, in many instances, the state of California. Therefore, the data this Commission collects must be meaningful. The whole purpose of this Commission's creation was to address drive-by lawsuits. Any data regarding the interior of a building does not fall under this term. Chair Burks recommended focusing on the Title III role as the data unfolds, because outreach and education is where the Commission will have the greatest impact on the enforcement issue.

Action Items

- No action items

6. BAGLEY-KEENE TRAINING

The Purpose of the Bagley-Keene Open Meeting Act

Ted Prim, a Deputy Attorney General, from the California Department of Justice (DOJ), stated the Bagley-Keene Open Meeting Act of 2004 ("the Act") is inefficient because it frustrates normal communication patterns. However, even with its negative aspects, there is a philosophy underlying it that does make sense.

It would be more efficient to appoint a department, and name a decision-maker to oversee it. The Legislature, instead, opted for a multimember board, because it placed a higher value in bringing together a variety of people from different

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backgrounds, viewpoints, and experiences to work together and make a consensus decision, which is inherently inefficient. The Legislature took it one step further and added public participation into the process.

The debate, deliberations, and give-and-take of this consensus process takes time, and the public needs to be there participating in it. To protect public participation in the process, the public must have notice of meetings so that members of the public can testify on agenda items and have access to records related to the decision-making process. Closed sessions defeat the process of public participation.

Everything in the Bagley-Keene Act is designed to keep exceptions to open meetings narrow. Mr. Prim hoped this presentation would help Commissioners to accept the premise of multimember bodies and the consensus-building process, the right of public participation in that process, and to come to a better understanding of the Bagley-Keene Act, with all of its flaws and inefficiencies.

Bodies Covered by the Act

Julia Bilaver, a Deputy Attorney General from the DOJ, stated the Act applies to multimember state bodies made up of two or more people. It applies to state bodies that are created by statute or Executive order, including this Commission, even if the body is advisory only, and applies to advisory bodies of the state body.

Advisory Bodies – An advisory body is a Committee, subcommittee, or task force of a state body and has at least three persons. The three persons may be members of the state body, staff, or members of the public. An advisory body must be created by a formal action of the state body. The formal action does not have to be a formal resolution, but can be any action of the state body resulting in the creation of an advisory body. For example, the executive director creating an advisory body by request of the Commission is enough action by the Commission to create an advisory body that is subject to the Act.

Formal action can also take implied ratification. For example, if three members of the Commission regularly meet outside a public meeting to discuss agency business, it is possible that the three members have created an advisory body. Therefore, the DOJ cautions that no more than two members of the state body, even if less than a quorum, should discuss agency business outside of the public meeting at any time. This rule of thumb is referred to as “the rule of two.” Abiding by this rule can help Commissioners avoid inadvertent violations of open meeting laws.

Delegated Body – A delegated body exercises discretionary authority and is made up of two members. An example would be an executive committee.

Body Determined by Membership – A body determined by membership is a public or private body on which a state body member serves in his/her official capacity; the public or private body receives funding from the state body.

What is a Meeting?

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Mr. Prim defined a meeting as occurring when a quorum of a body convenes to discuss issues under the body's jurisdiction. There are exceptions, but that is the general rule.

Types of Meetings – Regular Meetings are meetings that are scheduled with a ten-day notice. A special meeting, which is allowed in some circumstances, has a shortened notice and is limited to a particular subject matter. Emergency meetings and teleconference meetings are other types of meetings.

Serial Meetings – Meetings may also include a series of meetings that directly or indirectly involve a quorum of the body to discuss, deliberate, or take action on any item under jurisdiction. In a five-person body, three members out of five constitute a quorum, and this becomes a serial meeting.

Meetings can be face-to-face, or occur through e-mail, telephone, text, Twitter, instant messaging, or other technologies. It is any way in which the quorum of the body can communicate on issues under its jurisdiction. All of these can constitute a violation of the Act.

There is an exception that is relatively new in statute that does allow some communication. A member of the agency, such as the executive director, can, in separate conversations, contact individual members of the body to either answer questions or provide them with information, as long as there is no sharing of comments between the other members. There can only be one member present at any time during such a conversation. Typical situations might include the sharing of agendas or packets and requests for focus areas.

Social Gatherings – Ms. Bilaver stated there are some limited types of gatherings that are not subject to the Act. This could be a conversation between a Commissioner and a member of the staff or public. There is also a limited exception social gatherings, as long as the majority of the board is not discussing agency business at the conference or social gathering. Also, as a board, members can attend an open and noticed meeting of a standing Committee of the body, as long as the state body members, who are not members of that Committee, only attend as observers and do not participate in that meeting.

Relaying confidential legal advice from legal counsel to each board member is not subject to open meeting requirements, as long as the members do not discuss it privately outside of a public meeting.

Notice and Agenda Requirements

Ms. Bilaver stated the Act requires notice to be posted on the Internet ten calendar days in advance of a meeting, which also must be provided in writing to anyone who requests a copy. The notice must include an agenda of the matters to be discussed at the meeting and a brief description of each, typically no longer than twenty words but containing enough material about the matter so that the average layperson can make an informed decision whether to attend and participate in the meeting.

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Once the agenda is posted, items should not be added to it once the ten-day notice period has started, but there are exceptions. Items not on the agenda should not be discussed at the meeting. Closed session items have specific notice requirements. The notice must be provided in alternative formats to accommodate persons with disabilities.

Public Participation – Mr. Prim stated the public has certain rights in attending meetings. The public cannot be required to identify themselves to attend a meeting. If people want to attend the meeting anonymously, they have that right. If there are sign-in sheets, it should be indicated that those are voluntary, so people do not feel that they must sign in to attend the meeting. The DOJ suggests following the same practice when it comes to testimony, and identifying comments as Anonymous 1, etc., so these people can still provide their views. People have a right to testify before or during consideration of an item. People are allowed to record meetings, and they can be deterred from that only if the act of their recording represents a persistent disruption to the meeting.

In addition to items that are on the agenda, testimony can be taken on any item under jurisdiction, as long as the board does not deliberate on it or make decisions on it. If a member of the public wants to speak on items that are not on the agenda, the law allows that testimony. The best practice is to have a place on the agenda to accept that kind of testimony. The Brown Act, which is the open-meeting law for local government agencies, requires agencies to do that, but Bagley-Keene does not – it merely permits it. Most people agree that this is the best practice. He suggested placing reasonable time limitations for each individual's testimony.

Access to Records – Mr. Prim stated people have the right to acquire records about meetings; when information is distributed to a majority of the body, it must be made promptly available to members of the public who request it. He suggested posting it on the Internet. Only the notices are required to be posted there, but best practices suggest posting the agenda items and support information on the Internet as well.

Records that are related to the meeting need to be made available at the meeting. Information received from third persons should be made available to the public as soon as possible after the meeting. The Public Records Act is also applicable to this Commission, and to information received in connection with meetings.

Closed Sessions

Ms. Bilaver stated there are various narrow exceptions to the requirement that all meetings of a state body be open to the public. They are called "closed session" exceptions. The two most common exceptions are the personnel exception and the pending litigation exception.

Personnel Exception – Under the personnel exception, the Commission may meet in closed session to consider a personnel decision, such as the employment,

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evaluation, or dismissal of a public employee. The purpose of this exception is to protect the privacy of the employee. In order to consider any type of disciplinary action against an employee, the employee must be given written notice that they have the right to a public hearing.

Pending Litigation Exception – Under the pending litigation exception, the Commission may meet in closed session to confirm or receive advice from legal counsel regarding any litigation when discussion in open session would prejudice the position of the agency in the litigation. There are specific procedural requirements that apply when using this exception. Not all legal advice can be heard in closed session; it must be in connection with litigation that is pending or imminent.

There are specific procedural requirements for using the closed session exception. For instance, the noticed agenda must indicate that there will be a closed session, state the items that will be under discussion, and state the statutory authority for the closed session. Before convening the closed session at the public meeting, there must be an announcement of the items to be discussed during the closed session, and the public must be allowed to comment on the closed session matter.

Once in closed session, only items listed on the agenda and announced at the meeting may be discussed. Commissioners may not stray into other topics, even if those topics are related to the closed session agenda item. A staff member must attend each closed session to record topics discussed and decisions made during the closed session. After the closed session, the board must reconvene the public before adjourning the meeting. It is important to remember that only the staff members that have an official role in the closed session can attend. If the closed session is regarding pending litigation, those discussions are confidential; Commissioners should not reveal legal advice that was provided during the closed session.

Commissioner Questions and Discussion:

Vice Chair Hauge asked if there are other areas where the Brown Act differs from Bagley-Keene. Mr. Prim stated the Brown Act applies to local bodies and has a three-day notice. Bagley-Keene applies to state bodies in California and has a ten-day notice. The Brown Act has a provision that, if closed sessions are noticed in accordance with the language in the statute, it is deemed to have complied; Bagley-Keene does not have that provision. He stated the Brown Act is a good test to determine what the Legislature thinks is sufficient for a closed session notice.

Vice Chair Hauge cited the example of how a state board got into trouble when the executive director sent emails out to the board, and a board member clicked "reply to all." Mr. Prim recommended, as a way to avoid that, having the executive director send emails to the board addressed to himself, and BCC the Commissioners so they cannot click "reply all" and inadvertently cause a serial meeting.

Chair Burks asked if ad hoc or subcommittees are required to be open meetings, when developing a work product to bring back to the standing Committee. Ms.

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Bilaver stated they do not if they are advisory and are comprised of less than three members. The definition of advisory body is three or more members created by formal action of the state body. It may be that three members are less than a quorum, but it would still be an advisory body subject to the Act. That is why the DOJ recommends "the rule of two" – to avoid any inadvertent violations of the Act.

Commissioner Seferian asked about the remedies for Bagley-Keene violations and who has standing to bring a lawsuit. Mr. Prim stated any member of the public can bring a lawsuit and, in limited circumstances, there can be misdemeanor penalties. Ms. Bilaver added that there are also criminal and civil penalties for violations.

Commissioner Seferian asked, based on Bagley-Keene, if one of the remedies is invalidating the action that occurred in the meeting. Mr. Prim stated the actions of a meeting can be voided under certain circumstances.

Chair Burks asked if the work product can be voided. Ms. Bilaver stated a court can use it as a remedy.

Action Items

- No action items

7. DEMAND LETTERS/CLAIM FILING ITEMS

a. Update of Findings

Chair Burks stated the purpose of SB 1186, the legislation that established this Commission, was to verify that a problem existed and, if it did, what the problem was centered around. This Commission will be held accountable to empirical evidence. The allegation is that there are too many drive-by lawsuits, and small businesses are suffering a disproportionate treatment due to those drive-by lawsuits. This Commission's charge is to verify that this problem exists. The data collection of the court filings and demand letters that are being submitted is a process this Commission is developing in order to secure that empirical evidence.

The ADA directed the disability community to seek remedy to compliance issues through litigation; now they are being held accountable because they are litigating. There are allegations of unscrupulous activity in drive-by lawsuits, which are giving a bad name to the people with disabilities who are following federal law to redress compliance issues. Chair Burks emphasized his concern that the problem of enforcement is still not being addressed; there would be no litigation if the buildings had been built correctly in the first place.

Executive Director Castellanos stated data collection is at the beginning of a several-year process. The legislation is not the problem; it is the lack of access in the state of California. The Commission has an opportunity to use the collected data to provide education and encourage compliance. That is the program the Commission will build – to provide as many tools as possible to help make

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California more accessible. The access lawsuit issue is a tool to help the Commission understand how to use resources to do that.

Executive Director Castellanos stated a report of 944 filings and letters will be posted on the CCDA website on July 31st. The majority are court filings, and the law requires that a copy be submitted to the Commission within five days of filing. Staff has been collecting data from these court filings and demand letters, and identifying the top-ten violations, sorting and categorizing issues, and entering them in an ADA Violations Key Codes list. With Commissioner Seferian's assistance, staff worked with a legal intern who identified about twelve other issues that have been added to the list. The ADA Violations Key Codes List will continue to expand as issues arise.

Staff is gathering every relevant piece of information from the court cases and demand letters that seems useful, such as zip codes and types of businesses. The Commission will need to determine how to best utilize this data

b. Website Update

Executive Director Castellanos stated, along with the first posting of information on the court filings to the CCDA website on July 31st, the new website will be introduced. The current website is a typical government website containing information on the Commission and its importance, but is not useful to what is considered to be the customer or end user.

The goal is for the public to see the CCDA website as the website for assistance. Whether they are members of the business community or disability community, local government or building officials, architects, or constructors, the CCDA website will be the place to find information useful to them, and will provide the opportunity to exchange information, enter a dialogue, and create a sense of community. That is a very different kind of website – a consumer-based website. There will be a Facebook page, a Twitter account, and other important tools that will help people develop the kinds of relationships needed to spread the information and to encourage use of the educational tools and resources to the greatest extent possible.

Executive Director Castellanos introduced Wade Cooper, of Teranomic Software, the designer of the new website.

Mr. Cooper stated a large part of the new design is transitioning to a 2010 template. With the new template, the website will do everything the Commission wants and needs it to do. The new website has variable font size capability.

The front page contains links to sections titled What's New, Top Ten, FAQ, a YouTube video introduction, News and Review, and Other Agencies. Near the top are tabs titled Home, Disability, Government, Reports, and CCDA. Each of these tabs is searchable and contains pertinent links. There is also additional information about the Commission and contact links.

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Executive Director Castellanos stated the FAQ section has a navigation button to field numerous questions, comments, and letters that staff has responded to. This information is important because it comes directly from consumers, business owners, and disabled individuals. He is hopeful Teranomic can develop a stream where people can create a sense of community by asking each other questions, talking about their experience with building permits or architecture, and so on.

Executive Director Castellanos added that the news and review section will be used for announcements about what the press is saying about the CCDA, access, persons with disabilities, and the economy. There are sections for business owners who want information that helps them in business, and there are consumer and government sections. Those sections are easily located for people to find information that is useful and relevant for whatever situation they find themselves in.

The front page of the website functions as a navigation page, and everything will link to other pages. The information will change as the program changes and matures.

Commissioner Questions and Discussion:

Commissioner Wilson suggested maximizing the use of the CCDA website with feedback by putting together a simple, uncomplicated questionnaire. This information will provide raw data.

Chair Burks stated the need to ensure the website is in compliance with Section 508 of the Rehabilitation Act. He was concerned about how individuals in the community who use screen readers or who are blind will maneuver through all of the banners.

Executive Director Castellanos stated they are following the guidance of state policy, the CIO guidelines, and the DOR, and seeking an outside vision-disabled person to test it. Chair Burks encouraged the public to provide feedback on the accessibility of the website.

Commissioner Leemhuis stated it is possible to have multiple pages, so that the visually impaired can click a button to change the cover page. The message is to ensure its cultural modality depending upon the disability. Since there are language access laws, he recommended translating the website into Spanish as well. Mr. Cooper stated there are a number of limitations with what can be done in this format that are outside of his control.

Commissioner Leemhuis stated his concern that someone in the state IT department decided that everyone had to have the same website. The expectation is that the website is accessible, and the state should not be able to tell the Commission on Disability Access that it will not get an accessible website.

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Executive Director Castellanos agreed and stated this has been an ongoing discussion point. Staff is considering taking the website out of the state system to have it hosted by another organization. Language, accessibility, and use of social media are difficult to do with what the Commission has available. This is an intermediate step right now. He asked if the "Disability" tab was acceptable, or if the word should be changed to "consumer" or another word.

Mr. Cooper cautioned that the number of letters is limited, and asked, if the word is changed, that it have no more letters than the word "disability."

Commissioner Leemhuis suggested changing the "Report" tab word to "tools." Executive Director Castellanos agreed.

Commissioner Leemhuis suggested that the rotating photos on the website capture the diversity of the state of California, such as a photo of a small business in a rural area, another one in San Francisco, and include people of all races and ethnicities. He also suggested that the rotating photos be indicative of what the Commission is trying to do – giving people access to small businesses. He suggested including photos of small businesses that are accessible.

Mr. Cooper stated finding photographs has proved to be problematic, as they need to be in letterbox format. If not, they would have to be stretched out or cropped. Mr. Cooper asked for Commissioners' help in finding photos that show people trying to access small businesses or small businesses that are accessible, because the photos will be updated from time to time.

Commissioner Leemhuis stated there are two possibilities: Shutter Box has inexpensive disability photos, or, as an outreach project, people could go on a photo shoot. Commissioner Leemhuis offered his assistance.

Action Items

- No action items

8. FUTURE AGENDA ITEMS

Chair Burks stated the next Executive Committee meeting is scheduled for August 15, 2013. He asked Commissioners to submit suggestions for future agenda items to staff.

9. ADJOURNMENT OF CCDA MEETING

MOTION: Commissioner Leemhuis moved to adjourn the July 24, 2013, California Commission on Disability Access Full Commission meeting. Commissioner Wilson seconded. Motion carried unanimously.

Chairman Burks adjourned the meeting at 4:02 p.m.